

House Bill 1297 (AS PASSED HOUSE AND SENATE)

By: Representatives Mumford of the 95th, Levitas of the 82nd, Benfield of the 85th, Ralston of the 7th, Dukes of the 150th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 24 of Title 15 and Title 17 of the Official Code of Georgia Annotated, relating to sexual assault protocol and criminal procedure, respectively, so as to afford greater protection to victims of sexual crimes; to change provisions relating to sexual assault protocol; to provide that failure to follow the sexual assault protocol shall not preclude the admissibility of evidence; to provide for preservation of evidence; to allow victims of certain sexual offenses to have the right to have a free forensic medical examination even if the victim refuses to otherwise cooperate with law enforcement; to allow victims of certain sexual offenses to refuse requests for polygraph examinations or other truth-telling devices; to allow the Criminal Justice Coordinating Council to waive subrogation under certain circumstances; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to sexual assault protocol, is amended by revising subsections (d) and (e) of Code Section 15-24-2, relating to the establishment of sexual assault protocol committee and its purpose, as follows:

"(d) The protocol committee shall adopt a written sexual assault protocol, a copy of which shall be furnished to each agency in the judicial circuit that handles cases of sexual assault.

The protocol shall be a written document outlining in detail the procedures to be used in investigating, collecting evidence, paying for expenses related to evidence collection, and prosecuting cases arising from alleged sexual assault and shall take into consideration the provisions of Article 4 of Chapter 5 of Title 17. The protocol may provide for different procedures to be used within particular municipalities or counties within the judicial circuit.

The protocol committee shall adopt a written sexual assault protocol no later than December 31, 2004. The protocol committee may incorporate sexual assault protocols used in the judicial circuit as they existed on or before July 1, 2004.

(e) The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in sexual assault cases so as to increase the efficiency of all agencies handling such cases and to minimize the stress created for the alleged sexual assault victim by the legal and investigatory process; provided, however, that a failure by an agency to follow the protocol shall not constitute an affirmative or other defense to prosecution of a sexual assault, preclude the admissibility of evidence, nor shall a failure by an agency to follow the protocol give rise to a civil cause of action."

SECTION 2.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by revising subsection (b) of Code Section 17-5-56, relating to maintenance of physical evidence containing biological material, as follows:

"(b) In a case in which the death penalty is imposed, the evidence shall be maintained until the sentence in the case has been carried out. In a case that involves the prosecution of a serious violent felony as defined by Code Section 17-10-6.1, a violation of Code Section 16-6-5.1, or sodomy, statutory rape, child molestation, bestiality, incest, or sexual battery as those terms are defined in Chapter 6 of Title 16, the evidence that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the crime shall be maintained for ten years after judgment in the criminal case becomes final or ten years after May 27, 2003, whichever is later. Evidence in all other felony and misdemeanor cases may be purged."

SECTION 3.

Said title is further amended by revising Chapter 5, relating to searches and seizures, by adding a new article to read as follows:

"ARTICLE 4

17-5-70.

As used in this article, the term:

(1) 'Forensic medical examination' means an examination by a health care provider of a person who is a victim of a sexual assault. Such examination shall include a physical examination, documentation of biological and physical findings, and collection of physical evidence from the victim.

(2) 'Investigating law enforcement agency' means the law enforcement agency responsible for the investigation of the alleged sexual assault.

(3) 'Sexual assault' means rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, sexual assault against a person in custody, sexual assault against a person detained in a hospital or other institution, sexual assault by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and aggravated sexual battery as those terms and offenses are set forth and defined in Chapter 6 of Title 16.

17-5-71.

(a) Except as otherwise provided in subsection (b) of this Code section or Code Section 17-5-55 or 17-5-56, on or after the effective date of this Act, the investigating law enforcement agency shall maintain any physical evidence collected as a result of an alleged sexual assault that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of an alleged sexual assault, for ten years after the report of the alleged sexual assault.

(b) If the victim does not cooperate with law enforcement in the investigation or prosecution of an alleged sexual assault, the investigating law enforcement agency shall maintain any physical evidence collected as a result of such alleged sexual assault that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the alleged sexual assault, for not less than 12 months from the date any such physical evidence is collected.

17-5-72.

A victim shall have the right to have a forensic medical examination regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement in pursuing prosecution of the underlying crime. A victim shall not be required to pay, directly or indirectly, for the cost of a forensic medical examination. The cost of a forensic medical examination shall be paid for by the investigating law enforcement agency.

17-5-73.

No prosecuting attorney, investigating law enforcement agency, or government official shall ask or require any victim of a sexual assault to submit to a polygraph examination or any other truth-telling device as a condition precedent to investigating such alleged crime. The refusal of a victim to submit to a polygraph examination or any other truth-telling device shall not prevent an investigation or prosecution of any sexual assault."

SECTION 4.

Said title is further amended by revising Code Section 17-15-12, relating to the effect of accepting an award, as follows:

"17-15-12.

(a) Acceptance of an award made pursuant to this chapter shall subrogate the state, to the extent of such award, to any right or right of action occurring to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. The board may waive subrogation when the victim or claimant presents documentation and the board verifies that judgment, settlement, or other sources have not fully reimbursed the victim or claimant for expenses compensable under this chapter.

(b) Acceptance of an award made pursuant to this chapter based on damages from a criminal act shall constitute an agreement on the part of the recipient reasonably to pursue any and all civil remedies arising from any right of action against the person or persons responsible for or committing the act."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.